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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,787	11/07/2000	Benoit Laflamme		4281

7590 02/22/2005
John R Ross III
Ross Patent Law Office
P O Box 2138
Del Mar, CA 92014

EXAMINER

MASINICK, MICHAEL D

ART UNIT PAPER NUMBER

2125

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/709,787	Applicant(s) LAFLAMME ET AL.	
	Examiner Michael D Masinick	Art Unit 2125	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 155-198 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 155-198 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 2/7/2005 have been fully considered but they are not persuasive. Applicant has not argued the rejection as a combination of references, but only states that the references do not show downloading spa controller software. 35 U.S.C. 103(a) states that a patent may not be obtained if "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains". Examiner maintains that it is a clear rejection that one of ordinary skill in the art would have found it obvious to combine the teachings of the Bassett and Britt references in order to be able to download spa server software to the spa controller.
2. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.
3. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
4. Applicant's amendments to make the personal computer portable are do not make the invention patentably distinct from the prior art. See *In re Lindberg*, 194 F.2d 732, 93 USPQ 23

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(CCPA 1952) (Fact that a claimed device is portable or movable is not sufficient by itself to patentably distinguish over an otherwise old device unless there are new or unexpected results.)

5. Applicant's amendments to add the word "wireless" to claims 195-198 are found to be non-persuasive because Britt Jr. et al clearly shows the ability to download from satellites (Figure 9).

6. All rejections are maintained as previously stated.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 155-157, 160-163, 167, 170-172, 173-180, 183-189, 192-195, 198, are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,706,191 to Bassett et al in view of U.S. Patent No. 6,259,442 to Britt Jr., et al.

2. Referring to claims 155, 186, 195 and 198, Bassett shows a remotely controlled and monitored spa comprising: a spa controller (Col 1, lines 26-34), an interface signal converter, electrically connected to said spa controller ("AIM", Col 6, lines 5-20); and a remote computer connected to said interface signal converter via a communications link (Figure 15, note that HVAC is an example used in this figure), wherein said interface signal converter converts communication signals transferred from said remote computer via said communications link and directs the converted signals to the spa controller, and wherein said interface signal converter

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converts signals from the spa controller to be communicated to said remote computer via said communications link (Col 6, lines 14-20). Regarding claim 187, Bassett shows where data is a record of errors (Col 2, lines 9-21h).

3. Bassett does not show that the remote computer connected to the interface signal converter can be used to download software to the spa controller. Bassett does show a connection to the internet.

4. Britt Jr. et al discloses a system for downloading software to client workstations on an as needed basis via satellite or via the internet (Figure 9).

5. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the software downloading capability of Britt Jr. as a way to upgrade the client software of Bassett because automated upgrades in software prevent such problems as outdated software, inconvenient personnel use to install manual upgrades, forgetful users, and additions problems as cited in Col 1, lines 37-56 of Britt Jr.

6. Referring to claims 156 and 157, Britt shows wherein said software comprises updates to software already installed on said spa controller and that these upgrades are monitored and executed when needed (Col 1, lines 37-56).

7. Referring to claims 160-163, and 193, Bassett shows where the interface signal converter comprises an IR or RF transceiver and is capable of transceiving at least two different types of signals. Examiner notes that these AIMs are designed to run on the CEBus system shown in column 1, lines 46-60 and would inherently be able to transceive all communications available on such a system.

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8. Referring to claim 167 and 192, Bassett shows where the interface signal converter is integrated into the spa controller ("AIM modules", Col 6, lines 15-19).

9. Referring to claim 170-172, and 178-180, 184, and 185 Bassett shows a second computer for sending commands to said spa controller and receiving data from said spa controller wherein said second remote computer is connected to said spa controller via a computer network (LAN). Examiner notes that modems are used to connect computers to computer networks. Therefore any computer in the which contains a modem with access to a telephone line has the ability to connect to the spa controller and could qualify as a second computer connected via the internet.

10. Referring to claims 173-177, and 183, the operator or location of the system does not change the physical nature and connections of the system itself.

11. The wording of claim 188 does not change the structure of the spa system, and therefor is not further limiting the claim on which it is dependant.

12. Regarding claim 189, Bassett shows a CPU and an error indicator (Col 3, lines 3-31). Examiner notes that the CPU is part of every computer.

13. Regarding claim 194, Bassett shows the use of error monitoring and wherein the record of errors comprises the number of times and error has occurred in column 11, lines 14-36.

14. Claims 158, 159, 168, 169, 190 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,706,191 to Bassett et al in view of U.S. Patent No. 6,259,442 to Britt Jr., et al as shown above and further in view of U.S. Patent No. 5,877,957 to Bennett.

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15. Bassett does not specifically show the use of a RS-485 transceiver in the interface signal converter alone or as one of two different types of communications.

16. Bennett shows an appliance control system in a home automation environment. In Column 20, lines 1-9, Bennett shows that in addition to CEBus, X-10, and other home automation protocols, RS-485 may also be used. This also shows that the connection could be a wired or wireless connection as required by the system designer.

17. It would have been obvious to one of ordinary skill in the art at the time of invention to use a RS-485 transceiver in the AIM of Bassett because it is another commonly used protocol in the computer networking industry as shown by Bennett.

18. Claims 164-166 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,706,191 to Bassett et al in view of U.S. Patent No. 6,259,442 to Britt Jr., et al and further in view of U.S. Patent No. 6,459,959 to Williams et al.

19. Bassett in view of Britt Jr does not specifically show that the interface signal converter can be removable, secured, or fits into a cavity.

20. Williams shows an irrigation system with removable station modules for watering. Because of the damp conditions, these modules may be attached with screws as shown in figure 4, or a removable bracket as shown in figure 5. Figure 7 shows a cavity where the controller module would be placed.

21. It would have been obvious to one of ordinary skill in the art at the time of invention to use the removable modules and cavity of Williams in the spa control system of Bassett because

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they share the same problem of dampness and wet conditions. It would have been obvious to one looking to solve this problem to look in any art where large amounts of water are involved.

22. Claims 181, 182, 191, 196, and 197 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,706,191 to Bassett et al in view of U.S. Patent No. 6,259,442 to Britt Jr., et al and further in view of US Patent No. 5,764,639 to Staples et al.

23. Bassett does not show that the remote computer is a PDA or a cellular phone.

24. Staples shows that in column 4, lines 23-35, the use of a PDA or cellular phone to connect to a communications system.

25. It would have been obvious to one of ordinary skill in the art at the time of invention to use the PDA and Cellular phone of Staples as the remote computers in Bassett because they are smaller and easier to carry than a laptop computer as specified but can provide the functionality.

Conclusion

26. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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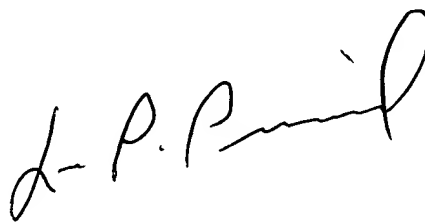
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael D Masinick whose telephone number is (703) 305-7738. The examiner can normally be reached on Mon-Fri, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (703) 308-0538. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7239 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

mdm
Dec 17, 2004



LEO PICARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100